

THE ESTABLISHMENT OF THE OFFICE OF THE CHIEF JUSTICE 2010 – 2013



**OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA**



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FOREWORD

On commencement of my duties as the Secretary General of the Office of the Chief Justice (OCJ) on the 1 April 2013, I embarked upon the following initiatives, amongst others:-

- The reconstitution of the Executive Committee of the OCJ;
- A needs assessment for the OCJ;
- The development of the OCJ Strategic Plan for 2014 - 2019;
- Presentation to Parliament to introduce the OCJ;
- Consultation with internal and external stakeholders;
- Compilation of a legacy booklet on the establishment of the OCJ;

This legacy booklet captures the main events relating to the proclamation of the Office of the Chief Justice as a national department in 2010 and the subsequent establishment of the office as a functioning business unit.

The OCJ was established as a transitional measure to render support to the Chief Justice in exercising administrative and judicial powers and duties as the Head of the Judiciary and the Head of the Constitutional Court. It was agreed that the process of establishing the Office of the Chief Justice would unfold in three phases as follows:-

Phase 1: The establishment of the OCJ as a national department located within the public service to support the Chief Justice as the head of the Judiciary and the head of the Constitutional Court;

Phase 2: The establishment of the OCJ as an independent entity; and

Phase 3: The establishment of a structure to provide for judicially-led court administration.

The establishment of the Office of the Chief Justice as a transitional measure provides a platform for the implementation of the judicial reforms that will improve service delivery and address the administrative challenges that have preoccupied the Judiciary over the years. If not addressed, these challenges could impact negatively on access to justice. Before the proclamation of the OCJ as a national department, the Chief Justice was not properly capacitated to execute his functions adequately without relying on the Executive. This arrangement had the potential to undermine judicial independence and the doctrine of separation of powers. Hence, the Executive initiated a process to introduce reforms contemplated by the Constitution with the twin goals of improving administration and ensuring the independence of the Judiciary.

The establishment of the OCJ goes a long way to give true meaning to the spirit of the Constitution that the judicial authority vests in the courts. Therefore, the role of the Chief Justice as the Head of the Judiciary has to be strengthened to ensure that the rule of law is upheld. Certain functions that deal with the administration of the courts are being transferred to the OCJ from the Department of Justice and Constitutional Development. Furthermore, a court administration model consistent with the Constitution is under construction and a draft document has been submitted to the Minister of Justice and Constitutional Development. A key element of this model is the extent to which the Judiciary will have control over its own affairs and resources and thus be able to determine its policies, strategic priorities and allocation of funds to pursue its priorities.

The OCJ is led by the Secretary General who is responsible for various support business units. Under the current transitional arrangements the budgetary resources reside with the Department of Justice and Constitutional Development. The OCJ is however in the process of securing an independent Budget Vote.

My objective is to provide strategic leadership and direction towards the attainment of the vision of the OCJ. Furthermore my priority will be to support the Chief Justice in the effort to create an independent, transformed and accountable Judiciary; and to ensure that the OCJ is fully capacitated to execute its mandate.

In April 2013, I facilitated the process of developing a Strategic Plan and Annual Performance Plans for 2014-2019. In drafting this Strategic Plan, I was guided by the framework for strategic planning developed by the National Treasury.

This five-year Strategic Plan is one of the requirements for operationalizing a National Department. Together with the Annual Performance Plan, budget and structure, it lays the institutional framework for an operational OCJ.

This first OCJ Strategic Plan will be tabled in Parliament in February 2014.

Ms Memme Sejosengwe

Secretary General: Office of the Chief Justice

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1. BACKGROUND AND INTRODUCTION

Over the years, the role and functions of the Chief Justice as Head of the Judiciary and Head of the Constitutional Court have steadily escalated. The Chief Justice has, however, not had the benefit of an adequate support structure to provide the capacity and human resources required for this purpose. As a result, the attention of successive Chief Justices has been diverted from their core judicial functions to the need to attend to various administrative tasks, and they have had to rely in large measure on support from the executive to enable them to do so.

This raised important issues concerning the independence of the Judiciary, and led to requests by the Chief Justices concerned for the capacitation of their office to facilitate the discharge by them of their duties and functions. Important issues were also raised by the Judiciary concerning the system of court administration inherited from the apartheid state. This system was highly centralized and driven by the Executive.

There have been on-going discussions between the Judiciary and the Executive in regard to these matters and the establishment of a system of court administration consistent with the Constitution and the evolving system of judicial independence contemplated by it.

Ultimately, agreement on how to address these issues was reached between Chief Justice Ngcobo and the Minister of Justice and Constitutional Development (the Minister) which led to correspondence between the Minister and the Minister for Public Service and Administration concerning the establishment of permanent capacity for the Chief Justice to perform his or her functions as Head of the Judiciary and Head of the Constitutional Court, and the need to establish a judicially led system of court administration. The process agreed to was defined in the following three distinct Phases:

Phase 1: The establishment of the Office of the Chief Justice as a national department located within the public service to support the Chief Justice as head of the Judiciary and Head of the Constitutional Court;

Phase 2: The establishment of the Office of the Chief Justice as an independent entity similar to the Auditor-General; and

Phase 3: The establishment of a structure to provide for judicially-led court administration

The Office of the Chief Justice was proclaimed by the President of the Republic as a national department in August 2010. In order to implement the decision to establish OCJ, an Interim Strategic Management Team (ISMT) was appointed with effect from 01 December 2010 to facilitate the establishment of the new department. Judge Yvonne Mokgoro was appointed to be the Judge in the OCJ responsible for administration and to oversee the ISMT.

The establishment of this office is a transitional first step in the advancement of the institutional independence of the Judiciary. The office is currently institutionalizing all that is necessary for the Chief Justice to properly execute his or her judicial and administrative functions.

The functions of the OCJ in Phase 1, as determined by the Minister for Public Service and Administration in terms of the Public Service Act 1994, are to:

- provide and coordinate legal and administrative support to the Chief Justice;
- provide communication and relationship management services and inter-governmental and international co-ordination;
- develop courts administration policy, norms and standards;
- support the development of judicial policy, norms and standards;
- support the judicial function of the Constitutional Court; and
- support the Judicial Service Commission in the execution of its mandate.

The establishment of the Office of the Chief Justice provides a platform for the implementation of initiatives that are designed to enhance effective functioning of the courts. The Chief Justice in his/her capacity as the Head of the Judiciary is responsible for developing policies, norms and standards for case management and monitor and evaluate performance of the courts.

Additionally, he/she is responsible for information technology and knowledge management which have an important role to play in enhancing access to justice. Financial and administrative support to Heads of Court, court budget and support for the South African Judicial Education Institute (SAJEI) and other judicial institutions are his/her additional responsibilities

The creation of the capacity necessary to undertake these responsibilities would assist the Judiciary to execute its constitutional mandate more efficiently.

A Memorandum of Understanding (MOU) was signed by the Department of Justice and Constitutional Development (DOJ&CD) and OCJ on 26 January 2012. In terms thereof, the administrative functions of the Constitutional Court, Supreme Court of Appeal, JSC and SAJEI, were transferred from the DOJ&CD. The MOU also provided for the OCJ to utilize the policies of the DOJ&CD while it was still in the process of developing its own.

At some point National Treasury proposed that the administrative functions of the High Courts should also be transferred to the OCJ. A breakthrough in finalizing this project and in the OCJ acquiring the status of a fully-fledged Department with its own vote account is reportedly imminent. The Secretary General of the OCJ and the DG of the Department of Justice and Constitutional Development are engaged in discussions to translate these plans into reality with affected structures including personnel and the trade unions.

2. THE MANDATE OF THE CHIEF JUSTICE

The Constitution of the Republic of South Africa, 1996 provides for the independence of the Judiciary, protects judicial independence by prohibiting any interference with the functioning of the Courts. The Constitution further imposes a duty on organs of state to assist and protect the Courts to ensure amongst other things, their independence, impartiality and efficiency.

The Constitution was amended in 2013 to formalize the Chief Justice as the Head of the Judiciary. The Chief Justice of South Africa is the most senior Judge in the country, and presides over the Constitutional Court, which is the apex Court of a single Judiciary. In addition to his/her judicial role, the Chief Justice represents the Judiciary nationally and internationally, which entails various coordinating and administrative responsibilities, and is also required to perform a multiplicity of constitutional and statutory duties and functions, details of which are set out in tables below.

TABLE 1: THE RESPONSIBILITIES OF THE CHIEF JUSTICE IN TERMS OF THE CONSTITUTION

Section	Specific Responsibilities
51	Chief Justice must determine the time and date of first sitting of the National Assembly
52	Chief Justice must preside over the election of the Speaker of Parliament
64	Chief Justice must preside over election of the Chairperson of the National Council of Provinces
86	Chief Justice must preside over the election of the President of the RSA
111	Chief Justice must designate a judge to preside over the election of the Provincial Speaker
128	Chief Justice to designate a Judge to preside over the election of the Premiers
167	Chief Justice as Head of the Constitutional Court
174	The President consults with the Chief Justice on the appointments of Constitutional Court Judges.
175	Chief Justice provides concurrence on the appointment of acting Judges by the Minister
178	Chief Justice is the Chairperson of the Judicial Service Commission.
Schedule 2 item 1	Chief Justice administers oath to President/Acting President
Schedule 2 item 2	Chief Justice administers oath to Deputy President
Schedule 2 item 3	Chief Justice administers oath to Ministers and Deputy Ministers
Schedule 2 item 4	Chief Justice administers oath to members of National Assembly, permanent delegates to the National Council of Provinces and members of Provincial Legislatures
Schedule 2 item 5	Chief Justice or a Judge designated by the Chief Justice administers oath to Premiers, Acting Premiers and Members of the Executive Councils

Schedule 2 item 6	Chief Justice administers oath to Judges or Acting Judges
Schedule 3 Part A item 9	Chief Justice must make rules for election procedures for Constitutional office bearers of the National Assembly, National Council of Provinces and Provincial Legislatures

TABLE 2: THE RESPONSIBILITIES OF THE CHIEF JUSTICE IN TERMS OF DOMESTIC PRINCIPAL LEGISLATION

LEGISLATION	SEC.	SPECIFIC RESPONSIBILITIES
Constitutional Court Complementary Act 13 of 1995	16	Chief Justice makes Constitutional Court rules
Judicial Service Commission Act 9 of 1994	2	Chief Justice is the Chairperson of the Judicial Service Commission
	8	Chief Justice is the Chairperson of the Judicial Conduct Committee
	37-38	Chief Justice must direct the performance of functions of the Secretary of the Commission and the Registrar of Judges' Registrable Interests

National House of Traditional Leaders Act 22 of 2009	22	Chief Justice administers oath to members of National House of Traditional Leaders
Pan South African Language Board Act 59 of 1995	6	Chief Justice presides at first meeting of the Board to elect a Chairperson
South African Judicial Education Institute Act 14 of 2008	7	Chief Justice is the Chairperson of the Council of SAJEI
Attorneys Act 53 of 1979	82	Chief Justice may, after consultation with the Judges' President of the several provincial divisions and with the Presidents of the several societies, make rules of court
Electoral Commission Act 51 of 1996	6	Mandates the Chief Justice to convene and chair a panel to process nominations for the Electoral Commission.
Constitution Seventeenth Amendment Act, 2012	165 (6)	The Chief Justice is the Head of the Judiciary and exercises responsibility over the establishment and monitoring of norms and standards for the exercise of the judicial functions of all courts.

Superior Courts Act 10 of 2013	8	<p>JUDICIAL MANAGEMENT OF JUDICIAL FUNCTIONS</p> <ul style="list-style-type: none"> ● Chief Justice may convene any forum of judicial officers ● Chief Justice exercises responsibility over establishment and monitoring of norms and standards of judicial functions ● Chief Justice may issue written protocols/ directives/ guidance/advice in connection with norms and standards & regarding any matter affecting the dignity, accessibility, effectiveness, efficiency or functioning of the courts Judicial Council
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	9	<p>Chief Justice must determine recess periods for Superior Courts in consultation with the heads of Courts and the ministry.</p> <p>The Chief Justice, as the head of the Constitutional Court is responsible to—</p> <ul style="list-style-type: none"> (a) ensure that sufficient Judges of that Court are available to conduct the business of the court at all times that the Court is open for business; (b) issue directions to the Judges of that Court with respect to their attendance at the court and absences from the Court during recess periods; (c) approve any extraordinary absence of a Judge from the Court; and (d) Keep a register, in the prescribed manner and form, of vacation periods allocated to, or extraordinary absence approved for, a Judge of that Court.
	10	<p style="text-align: center;">FINANCES AND ACCOUNTABILITY</p> <p>Expenses related to administration and functioning of Superior Courts must be defrayed from monies appropriated from Parliament. Minister must address requests for OCJ funds, as determined by Chief Justice after consultation with the heads of Courts (Section 54)</p>

Chief Justice may advise the Minister on regulations regarding

- (a) any matter that may be necessary or expedient to prescribe regarding the administrative functions of courts and the efficient and effective functioning and administration of the courts, including the furnishing of periodical returns of statistics relating to any aspect of the functioning and administration of courts and the performance of judicial functions;
- (b) the criteria to be applied for determining the number of judges to be appointed to the Supreme Court of Appeal and to any specific Division;
- (c) any protocol to be observed in respect of any process of consultation required in terms of this Act;
- (d) the determination of recess periods of the Superior Courts;
Any ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper implementation and administration of this Act.
- (e) Property not liable to be seized in execution
- (f) The manner in which of the representatives of the magistrates must be engaged in the application of section 8

3. CAPACITATION OF THE OFFICE OF THE CHIEF JUSTICE

To implement the decision to establish the OCJ, the former Chief Justice Ngcobo appointed former Constitutional Court Judge Yvonne Mokgoro to be the Judge in the OCJ responsible for administration. An Interim Strategic Management Team (ISMT) to facilitate the establishment of the new department was also appointed.

The idea of a new department was conceptualized by the committee led by former Chief Justices, the late Chief Justice Chaskalson and the late Chief Justice Pius Langa, under the theme “Capacitating the Office of the Chief Justice and Laying the Foundation for Judicial Independence. The committee completed its report in September 2011.

The Minister appointed an Acting Secretary-General with the concurrence of the Chief Justice with effect from 01 December 2010 to lead the ISMT. The necessary human resource delegations were issued by the Minister to the Acting Secretary General.

The Secretary General of the OCJ was subsequently appointed and commenced work on 01 April 2013 to provide overall leadership and management to the OCJ. The Secretary General is supported by the Executive Committee of the OCJ (EXCO) and the Operations Committee (OPCO). EXCO is a strategic decision making body in the OCJ and OPCO is an implementing body of the OCJ and makes recommendations to EXCO.

4. FINANCIAL MANAGEMENT

The OCJ is currently processing requisitions and payments through the DOJ&CD infrastructure and transversal systems (JYP and BAS). The process of obtaining the OCJ Budget Vote for the OCJ commenced through several submissions of a budget programme structure to National Treasury during the 2011/12 financial year. In January 2012, the process was restarted through a memorandum of understanding which identifies functions to be transferred to the OCJ. On 31 July 2012, the OCJ submitted a budget programme structure to National Treasury after it was signed by both the Director-General of the Department of Justice and Constitutional Development and the Acting Secretary General of the OCJ. In April 2013 the National Treasury approved the OCJ budget programme structure.

The OCJ is currently working towards obtaining its Budget Vote which is anticipated to be granted by 1 April 2014. Both the National Treasury and the DOJ&CD will be monitoring the progress of OCJ towards its readiness to handle the functions to be transferred. In preparing for the Budget Vote, the Director-General has granted the Secretary General with delegations to manage the ring-fenced budget allocated to the OCJ whilst still under the DOJ&CD vote.

During the 2011/12 financial year, the OCJ started as a Constitutional Court sub-programme of the DOJ & CD Court Services programme. This sub-programme had a budget of R117 million allocated of which R91 million was spent during that period. During the 2012/13 financial year a budget of R125 million was allocated for the same functions of which R95.7 million was spent. In the 2013/14 financial year a budget of R123 million is allocated to the OCJ. In the 2014/15 financial year, the functions of OCJ will include the High Courts, Specialized Courts and the Supreme Court of Appeal. These functions and the Judges' salaries paid from the direct charge will have an impact on the budget of the OCJ.

5. ENHANCEMENT OF COURT EFFICIENCY

The management of the Superior Courts currently resides with the Department of Justice and Constitutional Development. The Regional offices in addition also support the functioning and management of the Superior Courts. The Memorandum of Understanding (MOU) referred to above, concluded between the DOJ & CD and the OCJ transferred some functions traditionally performed by the DOJ & CD to the OCJ eg. the Constitutional Court, administration in connection with the Judicial Service Commission etc. The transfer of the administration of the High Courts from the DOJ & CD to the OCJ is imminent. The functions that were identified for transfer include court support staff, information and communications technology, facilities management, security, assets, data collection and analysis and HR functions.

Staff employed in the Superior Courts Efficiency Directorate at the National Office and administrative staff based at the Superior Courts will have to be transferred to the OCJ. It is envisaged that there is a total of 1486 staff members that will be transferred. The HR division has consulted with the labour organizations in this regard. The Secretary General of the OCJ is in discussions with the Director-General of the DOJ & CD in relation to the coordination of the transfer of the functions.

The various Departments/Units in the OCJ render support services to the Chief Justice and the Judiciary. One of the key functions of the Court Services Unit is to support the Chief Justice in the management of Courts. The Head of the Court Services unit is a member of the Judicial Case Flow Management Committee (JCFMC) and provides technical and administrative support to the Committee. This Committee is a sub-committee of the Heads of Court forum which is headed by the Chief Justice. The Committee is responsible for matters affecting case flow management at the Superior Courts. Some of the key projects which are underway under the supervision of the Case Flow Management Committee are: (a) the case flow management pilot project, (b) the case file audit project, (c) the development of norms and standards as contemplated in the Superior Courts Act) and (d) monitoring of court performance.

There have been three pilot sites that have been in operation for the case flow and case audit since 2012, conducted in KwaZulu-Natal High Court, Western Cape High Court, and North and South Gauteng High Courts. These sites have implemented Phase 1 and Phase 2 of the process and are in full swing with programme of clearing all the backlogs in the court roles.

As of this year 2013, Eastern Cape High Court, North West High Court have also been recognized as pilot sites and are also on board with the case flow and case file audit and are in full swing and there is much progress in the courts.

All the Judge Presidents are supportive of the process and are supporting and encouraging the Registrars and other court staff to embrace the idea as this will improve their work flow and flow of cases within the High Courts.

6. CHIEF JUSTICE'S INTERNATIONAL WORK

Since his appointment, the Chief Justice and members of the Judiciary have undertaken a number of official international visits. These visits were mainly two-fold namely ceremonial visits and study tours. In terms of the study tours, the focus of these visits was to obtain first-hand experience of best practices in the different areas of court administration and the judiciaries in other countries. The information secured during these official international visits, informs the work of the Chief Justice as Head of the Judiciary and as Head of the Constitutional Court.

Membership has been secured of the Conference of Constitutional Jurisdictions of Africa (CCJA) as well as the World Conference on Constitutional Justice (WCCJ). The Chief Justice has also been pivotal in the drafting of the strategic plan for the Southern African Chief Justices' Forum (SACJF). The work of the South African Judiciary therefore has a regional, continental as well as a global focus.

7. SOUTH AFRICAN JUDICIAL EDUCATION INSTITUTE (SAJEI)

The South African Judicial Education Institute (SAJEI) was established in terms of the South African Judicial Education Institute Act 14 of 2008. The main objectives of this Act as stated in section 2 are to:

- (a) provide proper, appropriate and transformational judicial education and training, having due regard to both our inherited legacy and our new constitutional dispensation; and
- (b) offer judicial education and training to aspiring and newly appointed Judicial Officers as well as continued training for experienced Judicial Officers.

SAJEI is led by a Council consisting of 24 members who are largely from the Judiciary. Other stakeholders such as Advocates, Attorneys, Academics as well as Traditional Leaders form part of the Council. The Chairperson of the Council is the Chief Justice. The term of office of the members is five years as provided for in section 7 of the SAJEI Act 14 of 2008.

Whilst the Council is working on amendments of the SAJEI Act which amongst others is intended to have a Judge at the helm of the Institute, a Chief Executive Officer, Dr Gomolemo Moshoeu has been appointed on contract basis with effect from 1st of May 2013. The current staff compliment of SAJEI is eight (8) including the CEO.

The Institute commenced with training of the Judicial Officers in January 2011. The training covers a wide range of topics that are intended to contribute towards court performance. Of note, SAJEI has developed both Basic and Advanced Aspirant Judges training programmes conducted by experienced Senior Judges of the Superior Courts. SAJEI has piloted training of Traditional Leaders on judicial leadership.

The Institute is also working on several projects including review of Bench Books of Judicial Officers as well as survey on Judicial Education in South Africa which is intended to enhance the delivery of training programmes.

8. JUDICIAL SERVICE COMMISSION(JSC)

The Judicial Service Commission (JSC) is a constitutional body established in terms of section 178 of the Constitution of the Republic of South Africa, 1996 (Constitution) and consists of 23 members. The terms and conditions of office of the members of the Commission are governed by the Judicial Service Commission Act, 1994 as amended (hereinafter referred to as the JSC Act). The primary functions of the Commission are to:

- (a) Interview candidates for judicial positions and make recommendations for appointment to the bench;
- (b) deal with complaints brought against the judges;
- (c) manage the Register of Judges' Registrable interests; and
- (d) advise national government on matters relating to the Judiciary.

The Secretariat of the JSC is located in the Office of Chief Justice. Following the coming into operation of the JSC Amendment Act on 01 June 2010, complaints lodged against Judges are now dealt with by the Judicial Conduct Committee. This committee comprises of the Chief Justice, Deputy Chief Justice and four other Judges. Since its inauguration the Judicial Conduct Committee has dealt with more than 200 cases. Amongst those cases are complaints that have been referred to be investigated and reported on by Judicial Conduct Tribunals.

The JSC sits twice a year in April and October and has over the years recommended candidates to the President for judicial appointment in the various divisions of the Superior Courts. It is due to sit on 7-11 October 2013 to interview candidates for the 10 advertised vacancies in the various divisions of the High Court.

The JSC Secretariat is headed by a Secretary, in the OCJ, and provides administrative support to the JSC. The JSC sits twice annually.

9. INFORMATION TECHNOLOGY

Currently, the OCJ utilizes the DOJ & CD's IT Infrastructure (as part of the Memorandum of Understanding entered into between the OCJ and the DOJ & CD).

The OCJ is in the process of implementing its own IT Infrastructure which will enable the OCJ to host the Judiciary and its administration in its entirety. An IT Steering Committee, comprising of DOJ & CD officials, Magistrates, Regional Court Magistrates, officials of the OCJ led by a Judge is currently considering the feasibility of the judiciary having its own IT domain and infrastructure.

The Constitutional Court has an autonomous IT infrastructure which operates independent from that of DOJ & CD's IT infrastructure; all other higher and lower courts are currently connected to the DOJ & CD's IT infrastructure. The OCJ Office has IT staff support within the OCJ that support the IT needs and requests of the staff within the OCJ office, which is also supported by the Constitutional Court IT Department.

10. STRATEGIC PLANNING FOR FINANCIAL YEAR 2014-2019

Upon assuming office, the Secretary General facilitated the process of developing a Strategic Plan and Annual Performance Plans for 2014-2019. In drafting this Strategic Plan the Secretary General was guided by the framework for strategic planning developed by the Department of National Treasury.

This five-year Strategic Plan is one of the requirements for operationalizing a National Department. Together with the Annual Performance Plan, budget and structure, it lays the institutional framework for an operational OCJ.

This strategic plan will be a milestone in the transformation of the Judiciary in South Africa in that it is the first strategic plan to be developed by the newly proclaimed Office of the Chief Justice. The first draft of both the Strategic Plan and Annual Performance Plans will be presented to the National Treasury in accordance with the Treasury Guidelines and finally to Parliament in early 2014.



**OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA**

14th floor Edura House
41 Fox Street
Johannesburg
2000

Private Bag X10
Marshalltown
2107

Tel: (011) 838 2020
Fax: (011) 838 2023



**OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA**